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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/721,557	11/22/2000	Mark Moriconi	BEAS-01453US1	5061
23910 7590 10/15/2007 FLIESLER MEYER LLP 650 CALIFORNIA STREET 14TH FLOOR SAN FRANCISCO, CA 94108			EXAMINER PYZOCHA, MICHAEL J	
			ART UNIT 2137	PAPER NUMBER
			MAIL DATE 10/15/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

09/721,557

Applicant(s)

MORICONI ET AL.

Examiner

Michael Pyzocha

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 September 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 57, 58, 63, 64, 72, 73, 81, 82 and 90-95 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 57, 58, 63, 64, 72, 73, 81, 82 and 90-95 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 6/19/07, 9/10/07.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

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**DETAILED ACTION**

1. Claims 57-58, 63-64, 72-73, 81-82 and 90-95 are pending.
2. Amendment filed 09/10/2007 has been received and considered.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 57-58, 63-64, 72-73, 81-82 and 90-95 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 57, 63, 72, and 81 each state that, the local security policy is created by selecting a subset of the rules defined in the global security policy. The specification does not provide support for this limitation. At best the specification defines the local

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policy being derived from the global policy, in other words, the local policy further defines the global policy.

5. Any claims not specifically addressed are rejected by virtue of their dependencies.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 57, 63, 72, and 81, rejected under 35 U.S.C. 103(a) as being unpatentable over Brownlie et al. (US 6202157) in view of Birnbaum (US 5797128) in view of Guedalia et al. (US 6148333) and further in view of Archibald et al. (US 5825883).

As per claims 57, 63, 72, and 81, Brownlie et al. discloses a policy manager for creating and distributing a security policy which includes a plurality of rules customized to the client and an application guard for managing access to securable components including at least one application as specified by the security

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policy (see column 4 lines 16-52; column 5 lines 1-5 and column 3 lines 25-34).

Brownlie fails to disclose the specific global and local policies and allowing or preventing access based on a user request, which includes a subject, an object and a privilege using an application guard within the application to control access.

However, Birnbaum teaches such global and local policies (see column 5 line 41 through column 6 line 5); Guedalia et al. teaches allowing or preventing access based on a user request, which includes a subject, an object and a privilege (see figures 1 and 2 and column 9 line 45 through column 10 line 30 and column 11 lines 14-65) and Archibald teaches the application guard being integrated into the application (see column 17 lines 45-64 and figure 15) to control access (see column 17 line 65 through column 18 line 15).

At the time of the invention it would have been obvious to a person of ordinary skill in the art to use global and local policies in the Brownlie et al system and to provide access control based on a request to the securable components using an application guard within the application of Brownlie et al.

Motivation to do so would have been to allow local devices/users to further define the global policy (see Birnbaum

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column 5 line 41 through column 6 line 5); to control access, track user requests and usage (see Guedalia et al column 4 lines 32-35); and to allow for metering of an applications usage (see Archibald column 17 lines 45-64).

8. Claims 58, 64, 73, and 82 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Brownlie et al., Birnbaum, Guedalia et al. and Archibald et al. system further in view of Luckenbaugh.

As per claims 58, 64, 73, 82, 90, 92 and 94, the modified Brownlie et al., Birnbaum, Guedalia et al. and Archibald et al. system fails to disclose managing access to functions of applications.

However, Luckenbaugh teaches managing access to portions of applications (see Luckenbaugh column 4 line 58 through column 5 line 5 and the abstract), and Official Notice is taken that at the time of the invention it would have been obvious to one of ordinary skill in the art for to monitor portions of applications and for the portions to be functions.

Note that the well-known in the art statement is taken to be admitted prior art because applicant failed to traverse the Examiner's assertion of Official Notice.

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Motivation to do so would have been to control access to portions of resources capable of running an application (see Luckenbaugh et al column 4 line 58 through column 5 line 5) and that functions are self-contained software routines that perform a specific task.

As per claims 90, 92, and 94 the modified Brownlie et al., Birnbaum, Guedalia et al., Archibald et al. and Luckenbaugh system discloses the application guard further allows for additional customized code to process and evaluate authorization requests based on the additional customized code (see Luckenbaugh column 8 lines 21-40).

9. Claims 91, 93, and 95 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Brownlie et al., Birnbaum, Guedalia et al., Archibald et al. and Luckenbaugh system as applied to claims 90, 92, and 94 above, and further in view of Balassanian (US 6324685).

As claims 91, 93, and 95, the modified Brownlie et al., Birnbaum, Guedalia et al., Archibald et al. and Luckenbaugh system fails to disclose the use of a global policy specifying access privileges.

However, Balassanian teaches such a global policy (see column 5 lines 54-65).

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At the time of the invention it would have been obvious to a person of ordinary skill in the art to use Balassanian's global policy as the modified Brownlie et al., Birnbaum, Guedalia et al., Archibald et al. and Luckenbaugh system's policy.

Motivation to do so would have been that a uniform security policy could be implemented from a single machine (see Balassanian column 5 lines 54-65).

### ***Double Patenting***

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.



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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 57, 58, 63, 64, 72, 73, 81, and 82 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 6, 11, 16 and 21 of copending Application No. 11/171104 in view of Guedalia et al. The copending claims disclose all the limitations except preventing access based on a user request, which includes a subject, an object and a privilege and storing the guard within the application. However, Guedalia et al. teaches allowing or preventing access based on a user request, which includes a subject, an object and a privilege (see figures 1 and 2 and column 9 line 45 through column 10 line 30 and column 11 lines 14-65) and Archibald teaches an application guard within the application (see column 17 lines 45-64).

At the time of the invention it would have been obvious to a person of ordinary skill in the art to provide access control based on a request to the securable components and for the application guard to be within the securable components of the copending claims.

Motivation to do so would have been to control access, track user requests and usage (see Guedalia et al column 4 lines

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32-35) and to allow for metering of the application (see Archibald column 17 lines 45-64).

This is a provisional obviousness-type double patenting rejection.

11. Claims 90, 92, and 94 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 11, and 21 of copending Application No. 11/171104 in view of Guedalia et al. and Archibald as applied above and further in view of Luckenbaugh. The modified claims fail to disclose the use of customizable code, however, Luckenbaugh discloses the application guard further allows for additional customized code to process and evaluate authorization requests based on the additional customized code (see Luckenbaugh column 8 lines 21-40).

At the time of the invention it would have been obvious to a person of ordinary skill in the art to use customizable code in the modified copending claims.

Motivation to do so would have been to allow for changes to the code.

This is a provisional obviousness-type double patenting rejection.

Claims 91, 93, and 95 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as

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being unpatentable over claims 90, 92, and 94 of copending Application No. 11/171104 in view of Guedalia et al., Archibald and Luckenbaugh as applied above and further in view of Balassanian. The modified claims fail to disclose the use of a global policy specifying access privileges.

However, Balassanian teaches such a global policy (see column 5 lines 54-65).

At the time of the invention it would have been obvious to a person of ordinary skill in the art to use Balassanian's global policy as the modified copending claims' policy.

Motivation to do so would have been that a uniform security policy could be implemented from a single machine (see Balassanian column 5 lines 54-65).

This is a provisional obviousness-type double patenting rejection.

#### ***Response to Arguments***

12. Applicant's arguments filed 09/10/2007 have been fully considered but they are not persuasive. Applicant argues that Archibald fails to teach the application guard controls access to the application, the examiner has user impermissible hindsight, and the terminal disclaimer overcomes the double patenting rejection.

With respect to Applicant's argument that Archibald fails to teach the application guard controls access to the application, in column 17 line 65 through column 18 line 15 Archibald teaches controlling access to the application based on a policy.

13. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

The terminal disclaimer filed 09/10/2007 has been received; upon approval by the specialists in the office the double patenting rejection will be withdrawn.

14. Applicant's remaining arguments with respect to claims 57-58, 63-64, 72-73, 81-82 and 90-95 have been considered but are moot in view of the new ground(s) of rejection.

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**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Pyzocha whose telephone number is (571) 272-3875. The examiner can normally be reached on 7:00am - 4:30pm first Fridays of the bi-week off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Emmanuel Moise can be reached on (571) 272-3865. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJP

  
**EMMANUEL L. MOISE**  
**SUPERVISORY PATENT EXAMINER**